



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt resolution authorizing the City Manager to execute a one-year service agreement at Hutchins Street Square with Livewire Media, Inc.

MEETING DATE: July 6, 2005

PREPARED BY: Tea Silvestre, Community Center Director

RECOMMENDED ACTION: Adopt resolution authorizing the City Manager to execute a one-year service agreement at Hutchins Street Square with Livewire Media, Inc. (aka "Ticket Fusion"), of Port Chester, New York

BACKGROUND INFORMATION: This agreement will allow Hutchins Street Square to utilize a software application provided by TicketFusion to facilitate management of event scheduling, ticketing and auditing for Performances at the Hutchins Street Square Facility. The agreement includes ticket printing equipment for point-of-sale use at the Square. There is no set-up cost to begin this service; monetary settlement is made to the vendor on a per-ticket-sold basis.

This agreement replaces the services of our previous vendor (New Era Tickets), who discontinued our agreement because they merged with a company that provides services for sports facilities only.

After careful review of the many ticketing services and vendors available, Livewire was chosen for its reputation, customer service, and affordability.

The \$2 per ticket fee currently charged at the Square's box office, as well as the \$4 per ticket fee currently charged on-line at the Square's website, will continue unchanged.

FISCAL IMPACT: The City currently realizes revenue from per ticket fees. This agreement will not change the Community Center's budgeted expenses or revenue.

FUNDING: None.


Tea Silvestre, Community Center Director

APPROVED: 
Blair King, City Manager

TicketFusion Service Agreement

THIS SERVICE AGREEMENT ("Agreement") is entered into as of the _____ day of _____,

20_____ by and between LIVEWIRE MEDIA, INC., a New York corporation ("TicketFusion") and

_____("User").

1. **DEFINITIONS:** As used in this Agreement, the following terms shall have the meanings indicated below:
 - a. Facility: The building(s) or venue(s) at which User presents its performances.
 - b. Performance: A presentation, act or event of any kind or nature, which is promoted or presented by User at a Facility.
 - c. The Admin™: A software application provided by TicketFusion to User to facilitate management by User of event scheduling, ticketing and auditing for Performances at the Facility.
 - d. TicketFusion™ System: The automated computerized ticketing system developed and maintained by TicketFusion and its affiliates.
 - e. Ticket: The issuance of admission to any Performance at a Facility.
2. **RIGHT TO SELL TICKETS:**
 - a. TicketFusion's Rights: User hereby grants unto TicketFusion the right to sell Tickets to Performances using the TicketFusion™ System. User may, at its option, utilize TicketFusion's call center services for transacting Ticket sales by telephone.
3. **TERM:** The initial term of the Agreement shall commence on the date hereof and shall continue for one (1) year thereafter. Upon termination of this Agreement, any transactions or events occurring prior to the termination date of this Agreement shall be subject to its terms and shall be enforceable against the User and TicketFusion, pursuant with this Agreement. TicketFusion reserves the right to terminate this Agreement at any time if, in its sole estimation, User and Facility have not adequately utilized the TicketFusion™ System for its main purpose of selling tickets to Performances.
4. **PERFORMANCE INFORMATION:** User shall properly and accurately enter all Performance information into the TicketFusion™ System using the Admin™ application as provided by TicketFusion. User shall be solely responsible for the accuracy, decency and legality of any information provided and entered by User into the TicketFusion™ System. User acknowledges that TicketFusion's sole obligation under this Agreement is to process the sale of admission Tickets and to make timely payments of the proceeds of sales of said Tickets according to terms defined herein.
5. **TICKET PRICING AND OTHER CHARGES:** The price of all Tickets ("Ticket Price") sold through the TicketFusion™ System shall be established by User. Included in the Ticket Price will be any additional house-charges, sales or entertainment taxes and any other charges that may be established by User.
 - i. **INTERNET TICKET SALES:** With regard to Ticket sales transacted over the Internet by way of the TicketFusion™ System, User acknowledges that TicketFusion will collect a convenience surcharge ("Convenience Fee") for each ticket sold, as follows: TicketFusion shall be entitled to collect, from ticket buyers, a convenience fee equal to twelve percent (12%) of the Ticket Price of Tickets purchased, not to be less than one dollar fifty cents (\$1.50) per ticket sold in this manner, and not to exceed four dollars (\$4.00) per ticket sold in this manner.
 - ii. **TICKETS SOLD THROUGH A TICKETFUSION TELEPHONE FACILITY:** Tickets sold on behalf of the User via TicketFusion call center facilities shall be subject to the same terms as those sold via the Internet, with an added human-assistance commission, retainable by TicketFusion, of one dollar (\$1.00) per Ticket sold.
 - iii. **BOX OFFICE TICKET SALES:** With regard to Ticket sales transacted at the Facility's box office by way of TicketFusion Point-of-Sale Systems ("Box Office Ticket Sales"), TicketFusion shall be entitled to compensation in an amount equal to twenty-five cents (\$0.25) for each Sold Ticket.

User shall be solely responsible for the payment and timely remittance of any and all sales, amusement, admissions and other taxes and charges incurred or assessed on Ticket sales (including penalties and interest with respect thereto) pursuant to this Agreement, whether included in the price of said Tickets, or calculated and added by TicketFusion at User request. User accepts full responsibility for making the determination where and if sales

tax is required by law. User authorizes TicketFusion to accept MasterCard, Visa, Discover, American Express and any other credit cards hereafter mutually agreed to by both parties in connection with sales of Tickets; all policies regarding the acceptance of cash and credit cards in payment for Tickets shall be subject to approval by TicketFusion.

6. **SETTLEMENT/EXPENSES:** Proceeds from all Ticket sales by credit card (or debit card) shall be processed directly through a merchant services account ("Merchant Account") to be established and maintained by User. Merchant Account as designated by User shall be subject to approval by TicketFusion, and shall be compatible with the TicketFusion™ System.

Alternatively, TicketFusion may offer, at its sole discretion, transaction processing through its own merchant services, with settlement for each Performance taking place not less than two business days after that Performance.

Monetary settlement between TicketFusion and User shall be administered by TicketFusion, subject to reasonable audit and review by User. If, for a given settlement period, a net balance as determined by the terms set forth herein shall exist in User's favor, TicketFusion shall remit, electronically or by check, one hundred percent of said balance. If, for a given settlement period, a net balance as determined by the terms set forth herein shall exist in TicketFusion's favor, TicketFusion shall submit an invoice to User for one hundred percent of balance owed to TicketFusion. User agrees that invoices will be paid within fourteen days of issuance; invoice balances not satisfied within thirty days of issuance shall be subject to interest penalties calculated at the monthly rate of one and one half percent (1.5%).

User shall not be entitled to collect from TicketFusion any revenue from Ticket sales transactions that have been refunded, charged back or annulled in any way. Processing expenses incurred by TicketFusion related to any such transactions shall be the responsibility of the User. TicketFusion reserves the right to withhold amounts from settlement if in TicketFusion's reasonable opinion there exists the likelihood of a charge-back or refund (due to events such as postponement, substitute acts, cancellation, etc.) against a TicketFusion Merchant Account. TicketFusion reserves the right to bill User for any credit card charge-backs by the customer, or related merchant service fees incurred with respect to any Performance or products and merchandise up to eighteen (18) months after the date of the sale. Payment is due in full by the User immediately upon receipt of such billing and/or TicketFusion shall deduct the charge-backs and related fees from the settlements to the User as described in Section 6 above.

7. **ORDER FULFILLMENT:** At User's discretion, TicketFusion will provide mail-order fulfillment via the U.S. Postal Service for Ticket orders placed via the Internet. Alternatively, Internet Ticket buyers for any given Performance will be placed on the Performance's will-call list.
8. **USER'S ACKNOWLEDGEMENTS:** User acknowledges that (i) TicketFusion's services under this Agreement are limited to serving as a provider to User of software for the purpose of selling admission Tickets, (ii) TicketFusion's responsibility for access to the TicketFusion™ System is limited to maintaining the availability of TicketFusion servers via the Internet. (iii) TicketFusion does not guarantee that any minimum or fixed number of Tickets will be sold, that short-term interruptions of service will not occur during the term hereof, nor that each person processing Ticket orders will be fully familiar with each or all of the performance details.
9. **USER'S REPRESENTATIONS AND WARRANTIES:** User represents and warrants to TicketFusion that:
- This Agreement has been duly authorized, executed and delivered by User and constitutes the valid, legal and binding Agreement of User, enforceable in accordance with its terms.
 - Signatory is an agent of User, which has exclusive rights to promote and present Performances at all Facilities, and is duly authorized to execute and deliver this Agreement.
 - User has experience advertising, marketing and otherwise promoting similar performances, and acknowledges the risks inherent in doing so. User has not, nor shall, rely upon TicketFusion for anything other than ticket distribution services as User's agent as expressly provided hereunder.
10. **MISCELLANEOUS:** This Agreement has been entered into in the State of California and will be governed by, and construed in accordance with, the laws of the State of California. The terms and conditions of this Agreement are enforceable by any party only in a court of competent jurisdiction within the State of California and each party fully consents to and submits to the personal jurisdiction of the State of California for that

purpose. If any portion of this Agreement is held to be unenforceable by a court of competent jurisdiction, such unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such unenforceable provision had never been contained herein and the remainder of this Agreement shall remain in full force and effect. User shall not assign this Agreement without the prior written approval of TicketFusion. This Agreement shall not be modified or amended except by mutual agreement, in writing, signed by an authorized representative of TicketFusion and User stating that it is such an amendment or modification to this Agreement. The parties acknowledge that this Agreement may be acknowledged via electronic facsimile (fax) and/or by hard-copy mail exchange, and shall be valid and binding when delivered by either means.

11. **INDEMNITY:** User shall indemnify, defend, and hold harmless TicketFusion, its affiliated or related companies and their respective directors, officers, employees, and agents (collectively, for purposes of this Section 11 only, "TicketFusion"), from and against any and all claims, actions, causes of action, damages, injuries, expenses (including court costs and reasonable attorneys' fees), obligations, losses, liabilities and liens, imposed on, incurred by, or asserted against TicketFusion whether in contract, tort or otherwise occurring as a result of, or in connection with, (i) User's management, operation or use of the TicketFusion™ System, (ii) any negligence or intentional misconduct by User, its employees or agents at any Performance or (iii) any injuries (including death) occurring at or in connection with any Performance, except to the extent that any such claim shall relate to TicketFusion's gross negligence or willful misconduct.

TicketFusion shall indemnify, defend and hold harmless User and its directors, officers, employees and agents (collectively, for purposes of this Section 11 only, "User"), from and against any and all claims, actions, causes of action, damages, injuries, expenses (including court costs and reasonable attorneys' fees), obligations, losses, liabilities and liens, imposed on, incurred by, or asserted against User whether in contract, tort or otherwise occurring as a result of, or in connection with, (i) any default under this Agreement by TicketFusion's receipt of written notice of any such default; or (ii) any alleged patent, trademark or copyright infringement asserted against User with respect to User's use of the TicketFusion™ System; except to the extent that any such claim shall relate to User's gross negligence or willful misconduct.

12. **NOTICES:** All notices must be in writing and must be sent by facsimile transmission (with confirmed receipt) and by overnight mail, proper postage prepaid to the facsimile numbers and addresses specified below. Any written notice under this Agreement shall be effective on the date such notice was sent.
13. **STATUS OF USER:** This Agreement is binding on the parties hereto only, and (except as provided in Section 11) no third parties shall have any rights, duties, or obligations under this Agreement and no third parties shall be beneficiaries of this Agreement. This Agreement shall not be construed as an offer and is not binding until accepted and executed on behalf of both parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

LIVEWIRE MEDIA, INC.
125 N. Main Street, Suite 402
Port Chester, New York 10573
Telephone: 914-937-8352
Facsimile: 914-935-0866

User (Company name): _____

Business Address: _____

Tax ID: _____

Telephone: _____

Facsimile: _____

By: _____

Title: _____


Tax I.D: 13-4030794

By: _____

Print Name: _____

Title: _____

Approved as to form

 Deputy City Attorney

RESOLUTION NO. 2005-134

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE A ONE-YEAR SERVICE
AGREEMENT WITH LIVEWIRE MEDIA, INC. (AKA "TICKET
FUSION") FOR USE AT HUTCHINS STREET SQUARE

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WHEREAS, this agreement will allow Hutchins Street Square to utilize a software application provided by Ticket Fusion to facilitate management of event scheduling, ticketing, and auditing for performances at the Hutchins Street Square Facility; and

WHEREAS, this agreement includes ticket printing equipment for point-of-sale use at Hutchins Street Square; and

WHEREAS, the previous vendor, New Era Tickets, discontinued service because it merged with a company that provides services for sports facilities only; and

WHEREAS, staff has reviewed many ticketing services and vendors available, and Livewire was chosen for its reputation, customer service, and affordability; and

WHEREAS, the \$2 per ticket fee currently charged at the Square's box office, as well as the \$4 per ticket fee currently charged on-line at the Square's Web site, will not change.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize and direct the City Manager to execute a one-year Service Agreement with Livewire Media, Inc. for use at Hutchins Street Square.

Dated: July 6, 2005

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I hereby certify that Resolution No. 2005-134 was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 6, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce, and Mayor Beckman

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk